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FOREWORD

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Legislative history and its use in judicial decisionmaking is a most appropriate subject for study during the bicentennial of our Constitution. It touches directly upon the proper relationship between the three branches of government—a relationship that was carefully crafted by the founders two hundred years ago to provide essential checks and balances.

Most, I think, would agree with the following statement of general principles:

> Our system of government is . . . a tripartite one, with each branch having certain defined functions delegated to it by the Constitution, while "[i]t is emphatically the province and duty of the judicial department to say what the law is," . . . it is equally—and emphatically—the exclusive province of the Congress not only to formulate legislative policies and mandate programs and projects, but to also establish their relative priority for the Nation. Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought.[1]

As the following discussion between Judge Kenneth Starr and Judge Abner Mikva demonstrates, these principles are not always easy to apply. Many statutes are genuinely ambiguous, either because of imprecise drafting or legislative compromise. Ambiguity does not, however, make the effort to respect the division of responsibility between the legislative and judicial branches any less important, for respect of that division is what the Constitution itself requires.

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1. TVA v. Hill, 437 U.S. 153, 194 (1978).